

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

DARRIN WALKER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Case No. 2:05-cv-449

Crim. No. 2:02-cr-035

JUDGE GRAHAM

Magistrate Judge ABEL

OPINION AND ORDER

On July 1, 2005, the Magistrate Judge issued a *Report and Recommendation* recommending that petitioner's motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. §2255 be dismissed. On July 20, 2005, petitioner filed objections to the *Report and Recommendation*. Petitioner objects to all of the Magistrate Judge's conclusions and recommendations.

The July 1, 2005 Report and Recommendation addressed three issues:

- (1) Whether petitioner's Sixth Amendment right to confrontation was violated because the United States willfully caused Perry Jemison to be unavailable for trial and Agent Carroll testified to statements Jemison made against petitioner;
- (2) Whether trial counsel was ineffective when his cross-examination of Agent Carroll elicited damaging evidence against petitioner; and
- (3) Whether trial counsel was ineffective for failing to conduct discovery or hire an investigator to interview Jemison prior to trial.

Pursuant to 28 U.S.C. 636(b)(1), this Court has conducted a *de novo* review of those portions

of the *Report and Recommendation* objected to by petitioner. As the Magistrate Judge found, petitioner offered no evidence that the Government caused Jemison to be absent from trial. Further, Agent Carroll did not offer any statements of Jemison which would be considered testimonial. Petitioner has also failed to demonstrate that his attorney's examination of Agent Carroll was constitutionally deficient or that his attorney failed to conduct an adequate pretrial investigation and failed to present exculpatory evidence at trial. For the reasons discussed at length in the *Report and Recommendation*, petitioner's objections are **OVERRULED**.

The *Report and Recommendation* is hereby **ADOPTED AND AFFIRMED**. This case is **DISMISSED**.

s/James L. Graham
JAMES L. GRAHAM
United States District Judge

DATE July 21, 2005